

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL DUNSMORE,

CASE NO. 13-CV-1193-GPC-(PCL)

Petitioner,

vs.

**ORDER DENYING PETITIONER'S
MOTION FOR RELIEF
PURSUANT TO RULE 60(B)**

PARAMO, Warden,

[Dkt. No. 49.]

Respondent.

Petitioner, Darryl Dunsmore ("Petitioner"), proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner filed a motion pursuant to Federal Rule of Civil Procedure ("Rule") 60(b) objecting to the Court's order overruling Petitioner's objection to Magistrate Judge's order denying motion for amendment. (Dkt. No. 49.) For the reasons stated below, the Court DENIES Petitioner's motion for Rule 60(b) relief.

Background

On November 7, 2013, Petitioner filed a Motion for Discovery pursuant to Rules 6 and 7 of the Rules Governing Section 2254 and 2255 Cases. (Dkt. No. 30.)

1 Petitioner asserted that discovery was “necessary for good cause to support [his] factual
2 allegations.” (Dkt. No. 30 at 2.) Petitioner also sought to expand the record in his state
3 court case to bring forth exculpatory evidence which supported his claims of
4 prosecutorial misconduct, perjury, and bias. (Dkt. No. 30 at 2.)

5 On November 14, 2013, the Honorable Peter C. Lewis, United States Magistrate
6 Judge (“Magistrate Judge”) denied Petitioner’s motion for discovery because he failed
7 to state a specific allegation that, if fully developed, would entitle him to relief under
8 Rule 6.¹ (Dkt. No. 33 at 2.) The Magistrate Judge also denied Petitioner’s request to
9 expand the record pursuant to Rule 7 because he did not demonstrate in his moving
10 papers, that he was diligent in attempting to present these additional documents in state
11 court. (Dkt. No. 33 at 2.)

12 In response, on December 5, 2013, Petitioner filed a Motion for Amendment of
13 Discovery. (Dkt. No. 42.) In his motion, Petitioner sought to introduce additional
14 documents supporting his contention that he was diligent in attempting to present these
15 materials to the state court. (Dkt. No. 42 at 2.) On December 10, 2013, the Magistrate
16 Judge issued an order denying the Petitioner’s Motion for Amendment of Discovery.
17 (Dkt. No. 43.) On December 20, 2013, Petitioner filed an objection to the Magistrate
18 Judge’s order filed on December 10, 2013. (Dkt. No. 46.) On January 29, 2014, the
19 Court overruled Petitioner’s objection to Magistrate Judge’s order denying motion for
20 amendment of discovery. (Dkt. No. 47.) On February 12, 2014, Petitioner filed the
21 instant motion for relief pursuant to Rule 60(b).

22 Discussion

23 Under Rule 60(b), the court may relieve a party an order for the following
24 reasons:

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26 ¹ Under Rule 6(a), “a judge may, for *good cause*, authorize a party to conduct discovery under
27 the Federal Rules of Civil Procedure.” 28 U.S.C. § 2254 Rule 6(a) (emphasis added). A habeas
28 petitioner demonstrates “good cause” within the meaning of Rule 6(a) when he or she states specific
allegations that, if the facts are fully developed, would establish that he is entitled to relief. Bracy v.
Gramley, 520 U.S. 899, 908-09 (1997) (citing Harris v. Nelson, 394 U.S. 286, 300 (1969)).

1 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
2 discovered evidence that, with reasonable diligence, could not have
3 been discovered in time to move for a new trial under Rule 59(b); (3)
4 fraud (whether previously called intrinsic or extrinsic),
5 misrepresentation, or misconduct by an opposing party; (4) the
6 judgment is void; (5) the judgment has been satisfied, released or
7 discharged; it is based on an earlier judgment that has been reversed or
8 vacated; or applying it prospectively is no longer equitable; or (6) any
9 other reason that justified relief.

10 Fed. R. Civ. P. 60(b).


11 Here, Petitioner does not provide any legal or factual basis for his motion under
12 Rule 60(b). He merely disagrees with the Court's ruling and reargues his motion for
13 discovery and motion for amendment of discovery. Such arguments are not subject to
14 relief under Rule 60(b). Accordingly, the Court DENIES Petitioner's motion for relief
15 under Rule 60(b).

16 Conclusion

17 Based on the above, the Court DENIES Petitioner's motion for relief pursuant
18 to 60(b).

19 IT IS SO ORDERED.

20 DATED: February 13, 2014

21 
22 HON. GONZALO P. CURIEL
23 United States District Judge
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